

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

Case No. 1:06-CV-88-TS

v.

JOHN J. GAURUDER, an
individual; JANA GAURUDER, an
individual; JANA GAURUDER, as
Trustee of HIGH TETONS, A
TRUST; UTAH STATE TAX
COMMISSION; and US BANK, HOME
MORTGAGE,

Defendants.

REPORT AND RECOMMENDATION

Before the court is a Motion for Dismissal of Defendant US Bank, Home Mortgage (hereafter "US Bank") filed by Plaintiff United States of America (hereafter "United States"). (Docket Entry #60.) The United States requests that the court dismiss US Bank, without prejudice, from this action pursuant to Rule 21 of the Federal Rules of Civil Procedure. Having carefully considered this motion and the record in this case, the court recommends that it be granted.

BACKGROUND

On March 3, 2008, the court entered a Report and Recommendation, which detailed the history of this case and recommended that the United States' motion for default judgment against Defendants John J. Gauruder, Jana Gauruder, and Jana Gauruder as Trustee of High Tetons, a Trust, be granted. (Docket Entry #48.) On March 24, 2008, the court adopted in full the Report and Recommendation and entered a default judgment against those three defendants. (Docket Entry #50.)

On September 25, 2008, the United States filed the Motion to Dismiss Defendant US Bank, and supporting pleadings. (Docket Entries #60-62.) No pleading in opposition to the United States' motion has been filed.

ANALYSIS

The United States explains in its memorandum that at the time it filed the Complaint in this case, it believed that US Bank was the beneficiary of a trust deed securing a mortgage with respect to the subject property of this action. Since then, the United States obtained a title report with respect to the subject property and determined that the public trustee holding the trust deed, of which US Bank was the beneficiary, filed a Deed of Reconveyance in Box Elder County, Utah. (Docket Entry #62-7, Page 2 of 11.) The Deed of Reconveyance indicates that the obligation secured by the trust deed in favor of US Bank has been

fully paid and performed. See *id.* Thus, US Bank no longer has an interest in the subject property.

As the United States points out, the absence of an interest in the subject property by US Bank is further supported by US Bank's failure to file any responsive pleading in this case, despite being properly served. (Docket Entry #6.)

RECOMMENDATION

Based on the above analysis, **IT IS HEREBY RECOMMENDED** that the United States' Motion for Dismissal of US Bank (Docket Entry #60) be **GRANTED**.

Copies of the foregoing Report and Recommendation are being mailed to the parties who are hereby notified of their right to object to the same. The parties are further notified that they must file any objections to the Report and Recommendation, with the clerk of the district court, pursuant to 28 U.S.C. § 636(b), within ten (10) days after receiving it. Failure to file objections may constitute a waiver of those objections on subsequent appellate review.

DATED this 22nd day of October, 2008.

BY THE COURT:

A handwritten signature in blue ink, appearing to read 'Samuel Alba', is written over a horizontal line.

Samuel Alba
United States Chief Magistrate Judge